

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of Five Star Group of
Minnesota, Ltd., d/b/a Commercial
Surveillance Bureau

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for a prehearing conference on August 18, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The OAH record closed at the conclusion of the prehearing conference.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce (the Department). Five Star Group of Minnesota, Ltd., d/b/a Commercial Surveillance Bureau (Respondent), did not appear.

STATEMENT OF ISSUES

The issue presented in this case is whether the Respondent is subject to discipline and/or civil penalties because:

(1) The Respondent made false and misleading representations in connection with the collection of a purported debt that it was licensed to do business in Minnesota, in violation of 15 U.S.C. § 1692e and Minn. Stat. § 332.37(12) (2008);¹

(2) The Respondent engaged in unlicensed debt collection activity, in violation of Minn. Stat. § 332.33, subd. 1;

(3) The Respondent failed to respond to the Department's administrative subpoena, in violation of Minn. Stat. § 332.40, subd. 3;

(4) The Respondent acted in an abusive or threatening manner and used intimidation in the course of doing business as a debt collector, demonstrating that it is incompetent or unqualified to act under authority or license granted by the commissioner pursuant to Minn. Stat. § 45.027, subd. 7(a)(4), and Minn. R. 2870.3700 (2009);

¹ All references are to the 2008 edition of Minnesota Statutes, unless otherwise noted.

(5) The Respondent has demonstrated untrustworthiness, in violation of Minn. Stat. § 45.027, subd. 7(a)(4); and

(6) The Respondent acted in an abusive or threatening manner by threatening to contact financial institutions or worksites to disclose debts to other parties, in violation of Minn. Stat. § 332.37(12).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 24, 2010, the Commissioner served by first class mail a copy of the Notice and Order for Hearing, Order to Show Cause, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) on the Respondent at its last known address.²

2. The Notice and Order for Hearing scheduled a prehearing conference in this matter on August 18, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

3. The Notice and Order for Hearing specifically notified the Respondent that failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.³

4. The Respondent did not appear for the prehearing conference, nor did Respondent contact the Administrative Law Judge prior to the prehearing conference to seek a continuance or request any other relief.

5. Because Respondent failed to appear for the prehearing conference, it is in default.

6. Pursuant to Minn. R. 1400.6000 (2009), the allegations contained in the Notice and Order for Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

² Affidavit of Service by First-Class Mail (June 24, 2010).

³ Notice and Order for Prehearing Conference at 5.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 45.024, subd. 1.

2. Respondent received due, proper and timely notice of the charges against it and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.

5. The Respondent is in default as a result of its failure to appear at the prehearing conference.

6. No collection agency or collector shall violate any of the provisions of the Fair Debt Collection Practices Act of 1977 while attempting to collect on any account, bill or other indebtedness.⁴ The Fair Debt Collection Practices Act prohibits the making of false, deceptive, or misleading representations in connection with the collection of any debt.⁵

7. The Respondent made false, deceptive, or misleading representations that he was a business consultant, not a debt collector, and he used a false name in communications with a debtor, in violation of Minn. Stat. § 332.37, subd. 12, and 15 U.S.C. § 1692e.⁶

8. No person shall conduct within this state a collection agency or engage within this state in the business of collecting claims for others without having first applied for and obtained a collection agency license.⁷

9. The Respondent engaged in unlicensed debt collection activity with regard to a Minnesota resident, in violation of Minn. Stat. § 332.33, subd. 1.

⁴ Minn. Stat. § 332.37, subd. 12.

⁵ 15 U.S.C. § 1692e.

⁶ There is no allegation in the Statement of Charges that the Respondent falsely represented that it was a licensed debt collector in Minnesota.

⁷ Minn. Stat. § 332.33, subd. 1.

10. The Commissioner has authority to administer Chapter 332 of Minnesota Statutes.⁸ A person subject to the jurisdiction of the Commissioner shall comply with requests for information, documents, or other requests from the Department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the Department.⁹

11. The Respondent failed to respond to an administrative subpoena issued in January 2010, in violation of Minn. Stat. § 45.027, subd. 1a.

12. No collection agency or collector shall publish or cause to be published any list of debtors except for credit reporting purposes, use shame cards or shame automobiles, advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, or use similar devices or methods of intimidation.¹⁰ No person subject to the duties and responsibilities entrusted to the commissioner shall engage in an act or practice that demonstrates the person is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority granted by the commissioner.¹¹

13. The Respondent attempted to collect a debt from a Minnesota resident in an abusive, threatening, and intimidating manner, in violation of Minn. Stat. § 332.37(7) and Minn. R. 2870.3700. These actions demonstrate the Respondent is incompetent or unqualified to act under authority granted by the commissioner, as provided in Minn. Stat. § 45.027, subd. 7(a)(4).

14. The Commissioner may impose a civil penalty upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner.¹²

15. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the Respondent.

Dated: August 27, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

⁸ Minn. Stat. § 45.011, subs. 1 & 4.

⁹ Minn. Stat. § 45.027, subd. 1a.

¹⁰ Minn. Stat. § 332.37(7); Minn. R. 2870.3700

¹¹ Minn. Stat. § 45.027, subd. 7(a)(4).

¹² Minn. Stat. § 45.027, subd. 6.

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, (651) 296-2488, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.